

Exhibit 3

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1 A. I believe so. Senior research scientist
2 or something like that. It was made up.

3 Q. Did Dr. Nielson also assist Dr. Rubin
4 with expert reports?

5 A. Correct.

6 Q. Did he have any expertise that was
7 different from yours?

8 MR. GOULD: Objection. Foundation.

9 THE WITNESS: Yes.

10 BY MS. LEIDEN:

11 Q. What was his expertise?

12 MR. GOULD: Same objection.

13 THE WITNESS: His expertise is in -- his
14 Ph.D. research was in BitTorrent network protocols
15 and the behavior of social con- -- constructs that
16 arise in those situations and in networking in
17 general and in security, so he -- he had worked in
18 numerous security contexts before that.

19 BY MS. LEIDEN:

20 Q. Did you ever work directly with
21 Dr. Nielson on any of the expert reports that you

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1 mentioned?

2 A. Yes.

3 Q. What -- how did that relationship work?

4 A. For particularly large cases, there was
5 enough for two people to work independently on
6 different code reviews and different parts of the
7 report. It wasn't typical for us to work together,
8 but occasionally it did happen.

9 Q. And you -- I believe you said that prior
10 to Harbor Labs, you had also worked at Google?

11 A. Correct.

12 Q. And what was your position there, if you
13 remember?

14 A. By the time I left, it was senior
15 software engineer, and I had been a tech lead two
16 times as well.

17 Q. And what precipitated the termination of
18 your employment from Harbor Labs?

19 A. Better pay and health insurance
20 elsewhere.

21 Q. Any other reason?

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1 MR. GOULD: Objection. Foundation.

2 THE WITNESS: I think there are numerous
3 ways you could measure such things. Most of them
4 would be in retrospect, after an investigation is
5 conducted by humans instead of the system, and it
6 is determined that this person was not assigned the
7 particular IP address or some other thing that the
8 system found was a destination for a download, for
9 example. There are several other things that could
10 be done, but that's one example.

11 BY MS. LEIDEN:

12 Q. And is it your recollection that the
13 Stroz report did not measure false positives?

14 A. That is my recollection, yes.

15 Q. And then, finally, on -- on the bottom of
16 that first page of that same document, do you see
17 that there's three -- a three-stage engagement
18 set -- set out at the bottom?

19 A. Yes, I see.

20 Q. Were you involved in coming up with those
21 three stages of the engagement?

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1 A. I don't remember being directly involved
2 in this. We may have had some brainstorming
3 sessions.

4 Q. Is it fair to say that Dr. Nielson was
5 the primary drafter of this document?

6 MR. GOULD: Objection. Foundation.

7 THE WITNESS: That fits my recollection,
8 and the authorship is listed on the document.

9 BY MS. LEIDEN:

10 Q. You can set that aside. Thank you.

11 Dr. Monson, were you involved in putting
12 together the consulting agreement between the
13 Center for Copyright Information and Harbor Labs?

14 A. I don't remember. I probably had
15 conversations about it leading up to it, but I
16 don't remember if I was involved any more deeply
17 than that. It was not typical for me to be
18 involved in that.

19 Q. Typically, who at Harbor Labs would be
20 involved in putting together a consulting
21 agreement?

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1 Q. So, just to close that loop, do you
2 recall having any conversations, even if you don't
3 remember their -- their names, with individuals
4 associated with the Center for Copyright
5 Information about the project?

6 MR. GOULD: Objection. Foundation.

7 THE WITNESS: Again, if -- if the people
8 we spoke to were associated with the Center for
9 Copyright Information directly, we -- I do not
10 remember, but they were associated with the
11 MarkMonitor system.

12 MS. LEIDEN: I'm going to mark this as
13 Defendants' Monson 3.

14 (Whereupon, Defendants' Monson Deposition
15 Exhibit 3, Evaluation of the MarkMonitor AntiPiracy
16 System, marked for identification.)

17 BY MS. LEIDEN:

18 Q. This is a document titled, Evaluation of
19 the MarkMonitor Antipiracy System. It has Bates
20 number RIAA_127758.

21 Dr. Monson, feel free to take a few

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1 minutes and look through this document, and then
2 I'll probably ask you if you recognize it.

3 (Whereupon, there was a pause for
4 document examination.)

5 BY MS. LEIDEN:

6 Q. Did you have a chance to -- to look
7 through it?

8 A. Yes. Thank you.

9 Q. And do you recognize this document?

10 A. I do.

11 Q. What -- what is this document?

12 A. This is either the report provided by
13 Harbor Labs to -- it looks like it's to CCI, or a
14 draft thereof.

15 Q. And looking through it today, do you have
16 any reason to believe that it's not the final
17 version?

18 A. Some of the language is a little bit
19 stronger than I recall the final report having, but
20 my recollection is pretty old, so --

21 Q. And what -- did you have an involvement

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1 in drafting this document?

2 A. Yes.

3 Q. And what was your involvement?

4 A. Mostly the -- the non-security-related
5 sections, the sections on testing, and
6 infrastructure, and resiliency, reliability, and
7 anything to do with machine-running metrics, like
8 high recall and high precision was mine.

9 Q. So, you were the primary drafter of the
10 sections that you just listed, including testing,
11 infrastructure. Was design another one of those
12 sections?

13 A. Design of system.

14 Q. On page --

15 A. This was a collaborative document. I do
16 not recall exactly who wrote what word, but I was
17 the final proofer of it and drafted the -- I don't
18 about -- remember about the design section. That
19 was probably a collaborative effort.

20 Q. And in addition to drafting and proofing
21 at least sections of this report, were you involved

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1 in the underlying analysis of the MarkMonitor
2 system?

3 A. Yes.

4 Q. And what was your involvement?

5 A. Well, it would be saying a bit much to
6 say we analyzed the system. We did not have access
7 to the system. What we analyzed was what was
8 represented to us about the system.

9 Q. And in that vein, looking on the -- the
10 first page on the bottom there, do you see the
11 section that says, Materials Relied Upon?

12 A. Yes.

13 Q. Okay. And the first bullet point says,
14 The Memorandum of Understanding; do you see that?

15 A. Yes, I do.

16 Q. Do you know what the Memorandum of
17 Understanding was?

18 A. I have no recollection of that.

19 Q. Okay.

20 MS. LEIDEN: I'm going to mark as Exhibit
21 Defendants' Monson 4.

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1 percentage of the data be downloaded. In addition
2 to these, an agent should be subjected to a test
3 where it receives a full piece, but not enough of
4 the download and a test where it receives enough of
5 the download, but never a full and complete piece.
6 In both of these cases, such tests would verify
7 that the agent cannot generate an infringement
8 report; do you see that?

9 A. Yes.

10 Q. Do you know what this refers to as a -- a
11 BitTorrent piece?

12 A. That's a term of art with which
13 Dr. Nielson would be much more familiar than me.

14 Q. Generally speaking, is this
15 recommendation that if additional testing were
16 done, there would be increased confidence that
17 enough of the BitTorrent file was being downloaded?

18 MR. GOULD: Objection.

19 THE WITNESS: I really didn't hear the
20 first part of the question. I was thinking about
21 something else. I apologize.

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1 be a lack of false positives?

2 A. Yeah, as defined previously where that
3 means people are not accused wrongly of copyright
4 infringement.

5 Q. Okay. And your conclusion here was that
6 the only measure of precision, as we just defined,
7 in the MarkMonitor system was a lack of appeals,
8 successful appeals, excuse me, by users who
9 had -- had been identified as infringing?

10 MR. GOULD: Objection. Form. The
11 document speaks for itself.

12 THE WITNESS: I -- yes. As -- yeah.

13 BY MS. LEIDEN:

14 Q. And going to the next page of the --
15 of -- of the MarkMonitor report in front of you
16 there, the next page is titled, Security; do you
17 see that?

18 A. Yes.

19 Q. And remind me, was -- was that the
20 section that you said that you had or had not had
21 involvement in drafting?

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1 A. I had involvement in drafting all of the
2 sections, but this would have been Dr. Nielson's
3 purview.

4 Q. Okay. If you want to turn the page,
5 there's a -- the next section on the page, on the
6 bottom right, which is 127763, --

7 A. Um-hum.

8 Q. -- there's a section titled, Reliability;
9 do you see that?

10 A. Yes.

11 Q. Okay. And can you read that first
12 paragraph under Reliability?

13 A. Sure.

14 THE WITNESS: Was that slow enough last
15 time? Okay.

16 While the design of the MarkMonitor
17 identification system is apparently precise under
18 stated assumptions, the practical accuracy of the
19 system is determined by the reliability of the
20 software, which can affect the validity of those
21 assumptions. System reliability typically has many

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1 Q. Sure.

2 A. -- have no reason to disbelieve. This
3 mechanism is subject to human error and, in
4 worst-case scenario, tampering by a compromised
5 employee.

6 Q. And what -- what -- what do you mean
7 there by tampering?

8 A. Any time a human enters data into a
9 system, that human has a choice and can enter
10 accurate data or inaccurate data according to their
11 understanding.

12 Q. And one of the recommendations -- sorry.
13 Excuse me. Strike that.

14 Was one of the recommendations to
15 MarkMonitor that they convert that verification
16 into a more automated system rather than a manual
17 system?

18 MR. GOULD: Objection.

19 THE WITNESS: I think it would be more
20 accurate to say that it was suggested that certain
21 cryptographic techniques be applied to parts of the

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1 system. I do not recall whether automation was
2 specifically part of the recommendation.

3 BY MS. LEIDEN:

4 Q. And can you describe what those
5 cryptographic techniques might be?

6 A. I could if I were Dr. Nielson.
7 I -- that -- that is much more his field than mine.
8 I have some expertise in the area, but it is
9 expertise I have acquired since this time. And so
10 I'm not fully confident that I could tell you
11 precisely what was meant at the time this was
12 written.

13 Q. Understood. And those -- those
14 cryptographic techniques, generally would the
15 purpose of those techniques be to reduce the
16 instance of human error?

17 MR. GOULD: Objection.

18 THE WITNESS: Digital signatures, which
19 are here listed, would be used to make tampering
20 evident as the primary use case for those in this
21 context, I believe.